

REMARKS/ARGUMENTS

Reconsideration of this application in light of the above amendments and following comments is courteously solicited.

Applicant by the instant amendment has incorporated the subject matter of dependent claim 16 into independent claim 11. Dependent claim 16 depended directly from independent claim 11 and, accordingly, it is submitted that this amendment should be entered for purposes of appeal as it does not raise new issues or new matters which would require further search and/or consideration.

Claim 11 as amended patentably defines over the cited and applied prior art references for the reasons set forth hereinbelow.

In accordance with claim 11, it is clear that it is the mating polygonal cross sections which result in securing the device against torsion. At least one radial locking bore is provided at the end of the second element for securing the second element in the bone. The polygonal engaging shapes thus prohibit the device from rotating.

The Examiner in referring to the Baumgart et al. primary reference refers to cavity (12); however, this cavity (12) does not function to secure against rotation. Securing the device against rotation is impossible in the Baumgart et al. reference because the locking elements (22) go through parts (20) and (10). This is discussed in Column 1, lines 10-20. The portion of the Baumgart et al. reference referred to in Column 2, lines 58-63 has nothing to do with securing against rotation. The polygonal cross-section discloses only the cross-section of the

intramedullary or medullary nail and is not part of a system for securing the device against rotation. The Examiner also asserts that the components of the implant should be secured against relative rotation and in this point refers to Column 3, lines 19-22 of Baumgart et al. This security against relative rotation is not carried out through the polygonal cross-section of the nail but rather through the pins (22) which pass through element (20) and a long hole of element (12), as noted above. The polygonal cross-section of Baumgart et al. has nothing to do with securing against rotation. The claim of the present invention is clear that the device for securing against rotation is a result of the polygonal forms on the two elements which engage each other. This is clearly claimed in independent claim 11 and not shown in the Baumgart et al. reference.

With regard to the Taylor et al. reference, while Taylor et al. discloses a polygonal cross-section, it should be noted that the device of Taylor et al. is positioned out of the bone. The device is located tangentially and parallel to the bone. There is nothing in the Taylor et al. reference which suggests the securing against rotation as claimed in independent claim 11.

Accordingly, it is respectfully submitted that independent claim 11 patentably defines over the prior art of record and the early issuance of a formal notice of allowance is respectfully requested.

An earnest and thorough attempt has been made by the undersigned to resolve the outstanding issues in this case

and place same in condition for allowance. If the Examiner has any questions or feels that a telephone or personal interview would be helpful in resolving any outstanding issues which remain in this application after consideration of this amendment, the Examiner is courteously invited to telephone the undersigned and the same would be gratefully appreciated.

It is submitted that the claims as amended herein patentably define over the art relied on by the Examiner and early allowance of same is courteously solicited.

If any fees are required in connection with this case, it is respectfully requested that they be charged to Deposit Account No. 02-0184.

Respectfully submitted,

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